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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

NICHOLAS LANDON HAYES,

Defendant and Appellant.

A151671

(Sonoma County
Super. Ct. No. SCR679835)

After the trial court denied his motion to suppress evidence, defendant Nicholas Hayes pled no contest to one count of possession of metal knuckles (Pen. Code, § 21810)¹ and one count of carrying a loaded firearm (§ 25850, subd. (a)). The court sentenced Hayes to an aggregate term of two years in the county jail pursuant to section 1170, subdivision (h), with the concluding six months to be served on mandatory supervision. On appeal, Hayes contends the court erred in denying his motion to suppress. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Hayes was charged by information with seven counts involving his possession of various weapons and ammunition that the police found after pulling over the car Hayes was driving. Hayes filed a motion to suppress the evidence obtained as a result of his traffic stop, and the parties agreed to limit the scope of the suppression hearing to reasonable suspicion for the stop. The evidence at that hearing revealed the following:

¹ Further statutory references are to the Penal Code unless otherwise indicated.

On April 19, 2016, around 4:25 p.m., Officer Eric Gelhaus of the Sonoma County Sheriff's Office was on duty with a trainee. His police radio was tuned in to the Sonoma County Sheriff's dispatch as his primary channel, but when nothing was being transmitted on that channel, he could hear secondary radio channels, such as the Santa Rosa Police Department's dispatch. It was at this particular time that Officer Gelhaus heard the Santa Rosa Police Department's dispatcher broadcast a report of an armed robbery at the Extended Stay Motel on Corby Avenue.

Officer Gelhaus drove to the motel and, en route, heard more information from the Santa Rosa Police Department's dispatch. Among other things, he heard that an armed robbery had occurred at the motel, and that the victim was a Spanish speaker in the motel lobby reporting the incident through the motel's clerk. Officer Gelhaus believed the dispatcher described the suspects as two Hispanic males and a white female with long dark hair. He also believed the dispatcher said something about a handgun.

Officer Gelhaus arrived at the motel about five minutes after hearing the initial dispatch. He stopped his patrol car at the Corby Avenue Extension near Dowd Drive, where he had a clear view of the motel's two driveways. He testified he parked there because it was the Santa Rosa Police Department's call, and he was just there "in case anybody fled." At this point, he knew from what he heard over the radio that the police had not yet secured the scene.

Around 4:33 p.m., Officer Gelhaus saw a dark colored car leaving the motel's west parking lot going toward Dowd Drive. Simultaneously, he heard a Santa Rosa officer say "Santa Rosa P.D." were just heading to the room where the crime occurred. As the car leaving the motel passed within 20 feet of Officer Gelhaus, he clearly saw the following: a white male driver with very short hair and a white t-shirt; a white male front passenger who did not have long hair; and a younger, lighter skinned female with long dark hair in the back seat. Upon seeing them, Officer Gelhaus radioed that he was going to stop a vehicle that "[m]atched the suspect description in terms of the people." He then performed a "high risk stop" on the car, which is a tactic that officers do when they have reason to believe a person might be armed or violent. Hayes was the driver.

After the stop, Officer Gelhaus debriefed his trainee about what happened and said he “[d]idn’t know if [he] had enough to do a full-blown high risk stop.” Officer Gelhaus testified he said this because the suspects in the car did not exactly match his recollection of the dispatcher’s description of the suspects insofar as he saw two white males in the car rather than two Hispanic males. Notwithstanding the discrepancy, Officer Gelhaus testified he believed the stop was reasonable because: the car was leaving the motel just as the Santa Rosa officers were going to the room where the crime occurred; the number and the genders of the occupants of the car matched the number and the genders of the suspects described by the dispatcher; and the female in back seat matched the dispatcher’s description.

On cross-examination, Officer Gelhaus testified he listened to the recording of the Santa Rosa Police Department’s dispatch just before the suppression hearing and learned the dispatcher did not, as he previously believed, say two Hispanic males were involved. Rather, the dispatcher said one white male and one Hispanic male with long hair were involved. The dispatcher also did not say the female’s hair was long. Officer Gelhaus acknowledged he could have missed things the Santa Rosa Police Department’s dispatcher said about the armed robbery. For one thing, he had not switched his radio over to the Santa Rosa Police Department’s channel as his primary channel, and multiple radio channels were playing as he was driving to the motel. Also, he was trying to drive and talk to his trainee at the same time.

Transcripts of the reporting party’s conversation with the dispatcher and the descriptions the dispatcher broadcast to the officers were admitted into evidence at the suppression hearing. The transcript of the reporting party’s conversation with the dispatcher reflects the reporting party described the female as being thin, white, short, around 5’3” or 5’4”, with black hair, and wearing no clothes; one of the males was described as having a gun and being Hispanic with long hair; and the other male was described as having a knife and being white, about 45 to 50 years old, and wearing a white hat. In relaying this description of the suspects over the radio, the dispatcher omitted the description of the female suspect’s height.

The superior court denied the suppression motion. The court found that Officer Gelhaus reasonably stopped the car to investigate, based on the circumstances that the car was leaving the scene of a contemporaneously reported robbery with three people of the same genders as the three people described by the dispatcher as the robbery suspects.

On appeal, Hayes contends the trial court erroneously denied his suppression motion because Officer Gelhaus lacked reasonable suspicion to initiate the traffic stop.

DISCUSSION

“In reviewing the trial court’s denial of a motion to suppress evidence, we view the record in the light most favorable to the trial court’s ruling, deferring to those express or implied findings of fact supported by substantial evidence. [Citations.] We independently review the trial court’s application of the law to the facts.” (*People v. Jenkins* (2000) 22 Cal.4th 900, 969.)

“The Fourth Amendment prohibits ‘unreasonable searches and seizures’ by the Government, and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest.” (*United States v. Arvizu* (2002) 534 U.S. 266, 273 (*Arvizu*)). “A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide *some objective manifestation* that the person detained *may be* involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231 (*Souza*), italics added.) In assessing whether circumstances give rise to reasonable suspicion, we consider the totality of the circumstances known to the detaining officer to determine whether the detaining officer had a “ ‘particularized and objective basis for suspecting the particular person stopped of criminal activity.’ ” (*Id.* at p. 230; *Arvizu, supra*, 534 U.S. at p. 273.)

“[T]he reasonable suspicion standard . . . is not a particularly demanding one, but is, instead, ‘considerably less than proof of wrongdoing by a preponderance of the evidence.’ ” (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 146 (*Letner and Tobin*)). “ ‘[T]he determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior.’ ” (*Ibid.*) We must allow “officers to

draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’ ” (*Arvizu, supra*, 534 U.S. at p. 273.) “[T]he possibility of innocent explanations for the factors relied upon by a police officer does not necessarily preclude the possibility of a reasonable suspicion of criminal activity. [Citations.] . . . Indeed, the United States Supreme Court has acknowledged that by allowing the police to act based upon conduct that was ‘ambiguous and susceptible of an innocent explanation,’ the court . . . ‘accept[ed] the risk that officers may stop innocent people.’ ” (*Letner and Tobin, supra*, 50 Cal.4th at pp. 146–147.)

Here, the record shows that Officer Gelhaus incorrectly heard or believed the dispatcher described the suspects as two Hispanic males and a long-haired female. The dispatcher actually described the male suspects as one white male in his mid to late 40s with a white hat, and one Hispanic male with long hair. The dispatcher also did not specify the white female suspect’s hair length. However, these discrepancies between the dispatcher’s description of the suspects and what Officer Gelhaus recalled or observed do not necessarily vitiate a reasonable suspicion to detain. Instead, these discrepancies must be considered as part of the totality of the circumstances. (*Arvizu, supra*, 534 U.S. at p. 273 [“When discussing how reviewing courts should make reasonable-suspicion determinations, [the United States Supreme Court] [has] said repeatedly that they must look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing”]; see, e.g., *People v. Craig* (1978) 86 Cal.App.3d 905, 911–912 [finding an investigatory detention reasonable because, although “[d]efendants did not perfectly match the general description given, . . . the descriptions and appearances were substantially the same, and coincided in the discernable factors (race, sex, build, number)”]; *People v. Smith* (1970) 4 Cal.App.3d 41, 44–45 & 48–49 (*Smith*) [holding officers reasonably stopped four black occupants in a 1961 Chevrolet about 30 blocks from a robbery that had been broadcast just minutes before, and stating that discrepancies between the broadcast—which described the suspects as three black persons in a white 1960, 1961 or 1962 Chevrolet—

and the stopped vehicle were minor and did not preclude the formation of reasonable suspicion].)

Apart from the aforementioned inaccuracies, the record establishes that Officer Gelhaus was correct about the dispatcher's description of the number and gender of the suspects, which matched the actual number and gender of the occupants in the car. Officer Gelhaus was also correct that the dispatcher described the female suspect as white, which aligned with Officer Gelhaus's observation of a female in the car who appeared white or "lighter skinned." Officer Gelhaus's testimony that the female suspect had dark hair also corresponded with the dispatcher's description of her having black hair. As in *People v. Craig, supra*, 86 Cal.App.3d 905, although there was not an exact match between the descriptions and what Officer Gelhaus saw, there was a match of discernable factors. Moreover, Officer Gelhaus was aware the reporting party was the motel clerk calling on behalf of, and translating for, a Spanish speaking victim. Officer Gelhaus, an officer with 26 years of experience with the Sonoma County Sheriff's Office, testified the fact that the victim was a Spanish speaker communicating with police through the motel clerk was significant because the use of a translating intermediary to report a crime meant what the dispatcher ultimately communicated over the radio could be different than what the reporting party originally communicated.

While general or vague descriptions " 'standing alone, [do not] provide reasonable grounds to detain all persons falling within that description' " (*People v. Walker* (2012) 210 Cal.App.4th 1372, 1388, quoting *In re Carlos M.* (1990) 220 Cal.App.3d 372, 381–382), such descriptions can give rise to reasonable suspicion justifying a detention when coupled with additional circumstances such as temporal and geographic proximity to a crime scene. (See, e.g., *People v. Overten* (1994) 28 Cal.App.4th 1497, 1504–1505 (*Overten*) [finding reasonable suspicion to detain where an officer received a dispatch informing him two armed black men wearing dark clothing with hoods had just robbed a motel about five to seven minutes away and, within minutes of the dispatch, the officer saw the defendant and a black man with a dark jacket, possibly with a hood down, drive by and saw heads of two black males pop up from the front and rear passenger's seat

before ducking out of sight]; *People v. Conway* (1994) 25 Cal.App.4th 385, 388–390 [upholding a stop where the officer had no description of the burglary suspects and did not know if they had a car, but pulled over a car less than two minutes after receiving a dispatch about a burglary in progress because “it was the only car on the street and was leaving the immediate area of a reported burglary”]; *People v. Lazanis* (1989) 209 Cal.App.3d 49, 52, 54 [finding a stop justified where the burglary suspects were described as black males and a white male and their car was described as being small, “like a Toyota,” because the stop occurred within moments of an officer’s report that the suspects were leaving the location and driving southbound]; *People v. McCluskey* (1981) 125 Cal.App.3d 220, 226 [concluding there was reasonable suspicion to stop a vehicle traveling from area of robbery reported minutes earlier, where the officer thought the passenger, “a 20-year-old Mexican male with dark hair and a dark jacket,” matched the description of the suspect—a “19-to 21-year-old Mexican male about 5 feet 10 inches tall, brown hair with a center part, mustache and dressed in a blue jacket”—and there were no other cars in the vicinity]; *Smith, supra*, 4 Cal.App.3d at pp. 44–45 & 48–49 [finding officers reasonably stopped four black males in a 1961 Chevrolet about 30 blocks from a robbery scene and minutes after dispatch had broadcast that three black men in a white 1960, 1961, or 1962 Chevrolet had held up a liquor store].)

As in the foregoing cases, additional circumstances were present in this case that supplemented the dispatcher’s general descriptions of the robbery suspects. Here, the evidence showed that Officer Gelhaus observed the occupants of the car leaving the motel a mere eight minutes after the crime took place and at the same time officers were going to the room where the crime occurred. Moreover, even though the dispatcher did not give a description of a suspect car, Officer Gelhaus knew the scene had not yet been secured and the motel here was situated within 50 yards of a freeway on-ramp, making it quite reasonable for Officer Gelhaus to believe the perpetrators might use a car to leave the scene. “Law enforcement can reasonably anticipate that a car will be employed to facilitate escape from a crime scene regardless whether one was reported.” (*Overten, supra*, 28 Cal.App.4th at p. 1505.) Viewing the record in the light most favorable to the

trial court’s ruling, we conclude that Officer Gelhaus had reasonable suspicion to conduct the traffic stop. (*People v. Jenkins, supra*, 22 Cal.4th at p. 969.)²

Hayes’s authorities and contentions to the contrary do not compel a different conclusion.

Hayes relies on *In re Tony C.* (1978) 21 Cal.3d 888.³ In that case, officers detained two black youths based on a report that “three black males” perpetrated a day-old burglary in the general area where the youths were found walking. (21 Cal.3d at p. 896.) *Tony C.* is distinguishable because, here, the officer conducted the challenged stop just outside the motel where a robbery had just been reported, at a time when the area had not been secured, and no suspects had yet been located or apprehended. Unlike the situation in *Tony C.*, there was much more than a day-old description of the number of suspects and their race.

Hayes also relies on *People v. Pitts* (2004) 117 Cal.App.4th 881 to argue that his presence near the motel alone was not enough to justify his detention. We are not persuaded. While *Pitts* supports the proposition that a person’s presence in a “high crime” area is not enough, by itself, to give rise to reasonable suspicion to detain, *Pitts* also acknowledges that presence in a high crime area is a factor that can support reasonable suspicion. (117 Cal.App.4th at p. 887.) As already explained, the detention here was not based solely on Hayes’s presence near the crime scene.

² In reaching this conclusion, we find it unnecessary to rely on *People v. Dolly* (2007) 40 Cal.4th 458, which the People cite to argue that public safety justified the detention. We note that *Dolly* is distinguishable in important respects. In *Dolly*, an anonymous tipster-victim supplied reasonable suspicion for a detention by providing an accurate description of a suspect with a cast on his arm who committed a violent crime and still had the potential to do so, telling police specifically where the suspect was parked, and describing the make and color of the car the suspect was in. (40 Cal.4th at pp. 462, 465–470.) Among other things, here there was no similar specific description of the suspects’ vehicle parked in a specific location.

³ *In re Tony C., supra*, 21 Cal.3d 888 was superseded on other grounds by article I, section 28, of the California Constitution.

Additionally, Hayes cites *Williams v. Superior Court* (1985) 168 Cal.App.3d 349 (*Williams*) to argue that Officer Gelhaus's "distorted comprehension" of the suspects' descriptions rendered the stop unreasonable. More specifically, Hayes relies on a portion of *Williams* where the court concluded an officer did not have reasonable suspicion to prolong a traffic stop based on the officer's "materially distorted" recollection of a residential robbery dispatch that had been broadcast the night before. (*Williams, supra*, 168 Cal.App.3d at p. 360.) The *Williams* court stated, in relevant part: "The officers' recollection of the [residential] robbery was materially distorted. He selectively took off 20 years and a full beard from the description of one robber and reduced the 6-foot-3-inch, 249-pound robber to 'average-to-above-in-height-and-weight' to meet the general physical appearance of defendants. Neither Williams [the defendant-driver] nor Holmes [his passenger] was nearly so large and neither had any beard. The magistrate believed that Holmes looked more like 45 than 25 years old." (*Ibid.*)

In contrast to the situation in *Williams*, Officer Gelhaus stopped the car to investigate because the car was leaving the scene of a contemporaneously reported robbery with three people of the same genders as the three people described by the dispatcher as the robbery suspects, including one woman who matched the dispatcher's description of a white female with black hair. While there existed some discrepancies between the information dispatched and the information Officer Gelhaus thought he heard, it was objectively reasonable for him to stop the car given the dispatcher's general descriptions of the three suspects, which the officer knew had been provided through a Spanish translator, and the temporal and geographic proximity of Hayes and his companions to the crime and the crime scene, which had not been secured. The facts here present no parallel to those in *Williams*, in which the officers apparently confused the dispatch broadcasts of two robberies (one dispatch occurred the previous night and the other was a week old) to create a composite description of suspects that bore no reasonable resemblance to the actual separate descriptions that had been broadcast. (*Williams, supra*, 168 Cal.App.3d at p. 360.)

DISPOSITION

The judgment is affirmed.

Fujisaki, J.

We concur:

Siggins, P.J.

Jenkins, J.

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